

# **Wage and Workplace Regulations**

**Chapter 9**



| <i>Management Context</i>                        | <i>Major Legal Issues</i>                                                                | <i>Relevant Law</i>                                  | <i>Illustrative Cases</i>                                        |
|--------------------------------------------------|------------------------------------------------------------------------------------------|------------------------------------------------------|------------------------------------------------------------------|
| Determining employee compensation and job duties | Overtime pay                                                                             | FLSA                                                 |                                                                  |
|                                                  | Minimum wages                                                                            |                                                      |                                                                  |
|                                                  | Exemptions for administrative employees and amusement businesses                         |                                                      | <i>Adams, Bridewell, Jeffery, Liger, Perez Hill, Shkuratova,</i> |
| Use of interns and trainees                      | Exemptions for interns and volunteers                                                    | FLSA                                                 | <i>Glatf, Chen</i>                                               |
| Minor League baseball players                    | Exceptions to overtime pay                                                               | FLSA/SAPA                                            | <i>Seene</i>                                                     |
| Creating a safe workplace                        | On-the-job injuries                                                                      | OSHA                                                 |                                                                  |
|                                                  | Employees handling dangerous substances or being exposed to blood or dangerous pathogens |                                                      |                                                                  |
| Employer liability for injuries to employees     | Workers' compensation for on-the-job injuries                                            | State workers' compensation regulations and programs | <i>Dozier, Savage, Elmhurst Park, James</i>                      |
|                                                  | Professional and college athletes as employees                                           |                                                      | <i>Uhlenhake, Rowe, Palmer, Matthews, Tupa, Rensing, Dawson</i>  |

## Management Contexts, Relevant Laws, and Cases

# Fair Labor Standards Act (FLSA)

- **Objective**

- Eliminate “labor conditions detrimental to . . . minimum standards of living necessary for health, efficiency, and general well-being of workers.”
- Sets standards for
  - minimum wages,
  - overtime pay,
  - recordkeeping, and
  - child labor.
- Protects more than 130 million workers.

# What FLSA Does Not Regulate/Require

Vacation, holiday,  
severance, and sick  
pay

Meal or rest periods,  
holidays off, or  
vacations

Pay for weekend or  
holiday work

Pay raises or fringe  
benefits

Discharge notice,  
reason for discharge, or  
immediate payment of  
final wages to  
terminated employees

# Minimum Wage and Overtime Requirements

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Maximum working hours: 40 per week

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Minimum wage: currently \$7.25

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Hourly employees working more than 40 hours/week (**workweek**) are entitled to overtime pay of at least 1.5 times normal wage

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Cannot waive right to overtime pay or agree to work more than 40 hours at regular pay

# Legal Review

- What are some of the pros and cons of establishing a minimum wage?
- Do you think the minimum wage should be increased? Why or why not?

# Exemptions Under FLSA— in the Sport Industry

Executive, Administrative, & Learned Professional (white-collar workers)

Seasonal Amusement & Recreational

Interns/Students

Minor League Baseball Players

# White-Collar Exemptions

Salary  
basis test

Salary  
test

Duties  
test

# Exempt Employee Categories

Executive

Administrative

Learned professional

Creative professional

Computer employee

Outside sales employee

# Seasonal Amusement or Recreational Establishments Exemptions

Businesses that operate seasonally or earn most of their profits during compressed time period (e.g., amusement park, swimming pool, or summer camp) and then closes.

Two Tests: Seasonal Operations or Receipts (must satisfy one)

Does not operate for more than seven months in any calendar year

Average receipts for any six months were not more than 33.3% of average receipts for the other six months in a calendar year

# Intern Exemption

Compensation of interns in the sport industry has been criticized.



Whether interns are employees under FLSA depends on circumstances surrounding their activities on the employer's premises.



Burden is on employer to demonstrate that exemption applies and criteria are satisfied.

# FSLA Internship Criteria to Claim the Exemption

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation.
2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
3. The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.
4. The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.
5. The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship

# Minor League Baseball Players

Save America's Pastime Act of 2018



Protects MLB and MiLB from FLSA claims and paying minimum wage or overtime pay



Players employed to play baseball during the season must be paid a minimum weekly pay rate of not less than \$290 per week



Does not require minimum weekly pay rate during spring training or off season

# Volunteers

- Volunteerism is an important element of the sport and recreation industry.
- Employees may not volunteer to do work for profit private sector employers for which they should be paid.

Defined: “An individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered.”

# Penalties for Violating FLSA

- Department of Labor investigates many alleged violations.
  - In 2019: Almost 20,000 compliance actions, resulting in \$226 million in payment of back wages.
- First offense: Civil monetary penalty of up to \$1,100.
- Second offense: Possible imprisonment.
- Violation to terminate or discriminate against employee for filing complaints (whistleblower protections)

# Competitive Advantage Strategies

## Complying with FLSA

### Job Descriptions

Regularly review and prepare employee descriptions and duties for new and existing positions.

### Exemptions

Determine which positions are nonexempt; and evaluate status of seasonal employees

### Records

Maintain work records for at least three years. Use written agreements for interns addressing criteria

### Continuous Evaluation

Evaluate part-time employees, independent contractors, and interns to ensure that FLSA requirements are met, when applicable.

# Occupational Safety and Health Act

# OSHA's Purpose and Function

## Regulatory Functions:

- Setting standards
- Conduct inspections to ensure workplaces are safe and healthy

## Safety Standards

- General duty clause
- Specific hazard standard

## Investigations

# OSHA— Examples from Sport Organizations



Safety standards related to building a new stadium



Ergonomic design of computer stations



Guidelines for preventing disease transmission of bloodborne pathogens, Covid protocols

# Competitive Advantage Strategies Workplace Safety and Health



# Workers' Compensation Laws

Provide compensation for workers who are injured on the job.

Designed to eliminate need for litigation.

Provide benefits for dependents of workers whose accidents or illnesses result in death.

Protect employers and fellow workers.

# Scope of Workers' Compensation

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Employee is entitled to benefits, regardless of who was at fault.

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Injury may be the result of a single incident or the result of work activities over time.

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Essential elements must be met.

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An employee engaging in voluntary physical activity during business hours is covered if acting within the scope of employment.

# Essential Elements for Workers' Compensation Claims

A compensable injury

Accidental, occupational disease, or cumulative trauma

Arising out of employment

# Legal Review

- What do you think of the example of the worker who sprains her ankle during a company softball game?
- Is she entitled to worker's compensation?

# Workers' Compensation and Athletes

## Professional athletes:

- Injuries routinely treated as compensable
- Issues arise regarding in which states claims may be filed (e.g. increase in compensation claims filed in California)

## College athletes:

- Courts have consistently determined that student-athletes are not employees of the school
- Workers' compensation benefits are not applicable

# Workers' Compensation Insurance

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Employers must secure insurance to cover claims.

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The cost of premiums is affected by the number of injuries at the workplace.

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Premiums are affected by employee risk category.

# Competitive Advantage Strategies

## Workers' Compensation

### Company Events

- Do not mandate or reward employee participation in company-sponsored teams.

### Voluntary Participation

- Make sure employees know that participation in these events is voluntary.

### Avoid Use of Company Premises

- Do not hold sport or fitness activities on company premises.

### Minimize Control of Activities

- Do not try to control these events; contribute only economic support.

### Research Insurance Coverages

- Research workers' comp premiums and get lower-risk classifications when possible.